

TESTIMONY OF FRANK C. THOMPSON, CHAIRMAN

UNIFORM CONSTRUCTION CODE REVIEW AND ADVISORY COUNCIL

OCTOBER 6, 2009

Chairman Gordner and members of the Senate Labor and Industry Committee, thank you for the opportunity to submit testimony regarding Pennsylvania's Uniform Construction Code development process at this hearing on Senate Bill 1001.

My name is Frank Thompson, and for the past six months, I have served as chair for the newly formed Uniform Construction Code Review and Advisory Council (RAC). In addition to serving as chair, I also fill the residential general contractor position on the Council and have over 30 years of experience in the building industry. I have extensive knowledge in code development at the International Code Council, having served as a member and chairman of the International Residential Code Building and Energy Code Development Committee as well as serving on their Building Code Council that oversees the process.

By submitting this testimony, it is my intent to focus in on the very real challenges the RAC faced in carrying out our first task of reviewing the 2009 model codes to recommend exclusion of new or amended provisions that may be inappropriate for Pennsylvania.

But before I get to that, I would like to offer a brief history of the Uniform Construction Code Review process.

The Uniform Construction Code Review and Advisory Council is a new entity to Pennsylvania's building code process. It was formed last October when Governor Rendell signed into law Act 106 of 2008.

That act established the Review and Advisory Council of which one duty is to determine whether any new or amended provisions to the newest editions of the International Code Council (ICC) model codes which are part of the UCC are inappropriate for Pennsylvania prior to adoption by the state Department of Labor and Industry. In making a determination on the new or amended provisions, the Council may consider whether it is consistent with the intent and purpose of the Act or is otherwise inappropriate for inclusion in the UCC considering the provisions of Section 102 as well as other relevant factors including but not limited to:

The impact that the provisions may have upon the health, safety and welfare of the public,

The economic reasonableness and financial impact of the provisions, and

The technical feasibility of the provisions.

However, the RAC is limited in what we can do: We cannot modify or add to the new or amended provision, only remove the provision from the code. And since the International Code Council addresses worldwide conditions, there are occasions where a code provision simply isn't appropriate for Pennsylvania and needs to be excluded from the Uniform Construction Code.

Prior to the creation of the RAC, the General Assembly was asked to address the appropriateness of the code revisions that would ultimately be adopted into the Uniform Construction Code. Three examples of exclusions made by the Pennsylvania General Assembly include: (1) excluding recreational cabins from the Uniform Construction Code, (2) residential stair geometry, and (3) deleting language in the 2006 International Residential Code related to foundation lateral wall bracing.

The problem with this method was that it took months for a bill to move through the General Assembly and be signed into law. Furthermore, many elected officials thought it would be better if construction experts and building code and public officials, instead of lawmakers, reviewed the ICC code changes, which are published every three years.

While Act 106 revised the process, it is still far from perfect. In the six months that we've been in existence, I am pleased to say that Council members have worked hard to become a more cohesive and functional group; however, there are still some hurdles to overcome.

First and foremost, the RAC wasn't given much time to develop the cohesiveness I spoke of above, let alone review changes to the code. Actually, the timeframe we were given was quite daunting.

The Council's deadline to report ICC code exclusion items to the Department of Labor and Industry was May 1. Our organizational meeting was March 9. After establishing a process and providing public notice, we had the month of April to review code changes and make our decisions.

When Act 45 was signed into law in 1999, there were two model codes that comprised Pennsylvania's Uniform Construction Code: the BOCA National Building Code and the CABO One- and Two-Family Dwelling Code. That has grown into the ICC family of codes of which Pennsylvania adopts all or part of the following:

International Building Code

International Mechanical Code

International Fuel Gas Code

International Plumbing Code

International Residential Code

International Fire Code

International Energy Conservation Code

International Existing Building Code

Performance Code

International Urban-Wildland Interface Code

There were hundreds of changes made by the International Code Council to these model codes for 2009, and the RAC is responsible for reviewing all changes and modifications.

It was at that first meeting on March 9 that it became apparent that the Council simply did not have ample time to review the hundreds of changes. The Council made the decision to review only those changes to

the codes where there was a request from the public or a Council member to exclude. In total, there were only 22 proposals to exclude provisions submitted, and there wasn't a single exclusion proposed to the biggest code book – the International Building Code, which regulates high-rise residential, commercial and industrial construction.

Another complication the fast-track timeframe caused was that the Council was being asked to review changes to codes that weren't yet published. In fact, at our April 2 meeting, the International Fire Code and the International Residential Code were still not available. We relied on the code change documents submitted to the ICC rather than looking at the newly published code and seeing how it fit together.

The Council met on April 2, 16 and 22 and voted to reject every proposal submitted to us to exclude a provision. Ironically on April 30, the Council considered a proposal involving a change to the required dryer duct length, and the Council voted to exclude this provision from the Uniform Construction Code. That decision, however, was reconsidered and reversed after being advised of the additional time and work this would create with the Department of Labor and Industry's adoption of the 2009 codes. Ultimately, no proposed exclusion of changes was approved by the Council, and our report was sent to the Department of Labor and Industry on May 1.

In my opinion, the fast-track timetable significantly hindered the public input process. Despite the Department of Labor and Industry's and Council's best efforts to notify the public of our schedule and process, the reality was that we still only had eight weeks to notify the public, receive proposals from them, and decide on the code changes. The public and Council members had less than a month at best and in most cases one or two weeks to submit their proposals to the Council. Personally, I noticed the absence of numerous organizations in this process, including the PA Chapter of the American Institute of Architects (AIA), the Building Owners and Managers Association (BOMA), the Association of General Contractors, PA Society of Professional Engineers, and the Engineers Society of PA, among others. I certainly do not attribute their absence to their lack of interest. I contacted representatives of PA AIA and BOMA regarding the process and submitting proposals. Though they expressed interest, there was not sufficient time for them to submit anything for the 2009 codes. I believe in the future they will participate in the process. Pennsylvania building material manufacturers, suppliers and consumers did not submit any proposals for exclusion.

Yet another challenge to the Council was that a number of the members of the RAC didn't have any first-hand experience in the code development process prior to their position on the Council. This limited experience made the learning curve tougher. Myself and several other Council members plan on attending the ICC Code Development Committee hearings (some for the first time) beginning later this month in Baltimore. This experience will be helpful in future code change reviews. Given the tight timeframe in which we had to work, I personally believe that the inexperience of some of our members and the Council as a whole adversely affected our ability to make the best recommendations as to what provisions should be excluded from the Uniform Construction Code.

In closing, I believe that the Council was hurried by the limited timeframe in which we had to receive public input and review the numerous code changes. I am optimistic that in the future with sufficient time, we can better engage the public in the process, review all the changes that deserve our attention, and make the best decisions for Pennsylvania, as had been contemplated by the General Assembly.

Additionally, the Council has recently reviewed and made recommendations to the General Assembly regarding a number of bills introduced related to the UCC. Those recommendations were forwarded to the members of this Committee on September 14 and included SB1001.